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JOHN E. ABDO, as Trustee of the JOHN E.

ABDO TRUST DATED MARCH 15, 1976

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DAVID COWAN

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

JOHN E. ABDO, as Trustee of the JOHN E. ABDO TRUS DATED JUNE 11, 2014, and JOHN E. ABDO, as Trustee of the JOHN E. ABDO TRUST DATED MARCH 15, 1976,

Plaintiffs,

v.

MICHAEL R. FITZSIMMONS, PETER LAI, CHRISTOPHER G. POWER, PETER J. GOETNER, CHRISTIAN BORCHER, ERNEST D. DEL, MARC S. YI, JAMES C. PETERS, and SOUHEIL S. BADRAN,

Defendants.

Case No. 17-cv-00851 EDL
 [Related Case No. 17-cv-1232 EDL]

JOINT STIPULATION TO: (1) EXTEND BRIEFING SCHEDULE ON MOTIONS TO DISMISS, (2) CONTINUE HEARING ON MOTIONS TO DISMISS, AND (3) CONTINUE INITIAL CASE MANAGEMENT CONFERENCE; [PROPOSED] ORDER AS AMENDED

Pursuant to Fed. R. Civ. P. 6(b)(1) and Civil L.R. 6-1, 6-2, and 7-12, the parties to the above-entitled action, and Related Case No. 17-cv-1232 EDL, by and through their undersigned counsel, hereby stipulate and agree as follows:

WHEREAS, on February 21, 2017, Plaintiffs filed their Complaint for Violation of Federal Securities Laws, Intentional Misrepresentation, and Negligent Misrepresentation (the “Complaint”) (Dkt. 1);

WHEREAS, on March 15, 2017, the Court entered its order relating the case entitled *Rising Tide I, LLC, et al. v. Michael Fitzsimmons, et al*, filed in this Court and bearing Case Number 4:17-cv-1232 KAW (the “Related Case”) to this case (Dkt. 11);

WHEREAS, all defendants in this action are also named defendants in the Related Case, (Related Case Dkt. 1), and defendant David Cowan is an additional named defendant in the Related Case but not the *Abdo* action (collectively, the “Defendants”);

1 WHEREAS, Defendants' Motion to Disqualify Stearns Weaver Miller Weissler Alhadeff
2 & Sitterson, P.A. ("SWMWAS") is fully briefed and is set for hearing on June 27, 2017, at 9:00
3 a.m;

4 WHEREAS, Plaintiffs' oppositions to Defendants' Motions to Dismiss are due on June
5 30, 2017;

6 WHEREAS, the parties have agreed to extend the briefing schedule on the Motions to
7 Dismiss in light of the pending Motion to Disqualify SWMWAS, continue the hearing on the
8 Motions to Dismiss, and continue the Initial Case Management Conference ("CMC");

9 WHEREAS, none of the proposed date changes will affect any other dates in these cases;

10 WHEREAS, the parties previously stipulated to and requested the Court issue an order
11 extending the responsive pleading briefing deadlines and hearing date, as well as the date for the
12 Case Management Conference in this action (Dkt. 12) and this Court granted that stipulated
13 request on April 5, 2017 (Dkt. 13);

14 WHEREAS, counsel for Defendant David Cowan subsequently made his formal
15 appearance and advised that he would be out of the country on the previously scheduled hearing
16 date (Dkt. 15);

17 WHEREAS, a motion was subsequently filed to initiate Federal Bankruptcy Rule 2004
18 examinations of nine of the ten Defendants, as well as a broad request under Rule 2004 for
19 documents that included discovery on matters related to the issues in these cases before this
20 Court (Dkt. 17-1, ¶ 8);

21 WHEREAS, because the Rule 2004 proceedings were expected to take a significant
22 amount of counsel's time, the parties requested an extension of the time to file responsive
23 pleadings, the briefing schedule on the motion to dismiss, and for the CMC on May 1, 2017
24 (Dkt. 17); and

25 WHEREAS, the joint stipulation was granted on May 2, 2017 (Dkt. 18).

NOW THEREFOR, the parties hereby stipulate and agree that:

- (1) Plaintiffs in this matter (17-cv-00851 EDL) and Related Case No. 17-cv-1232 EDL shall file their Oppositions to the *Abdo* case Defendants' Motions to Dismiss (Dkt. Nos. 21, 22) and the Related Case Defendants' Motions to Dismiss (Related Case Dkt. Nos. 19, 20, 22, 23), respectively, no later than July 11, 2017;
- (2) Defendants' Replies in support of Defendants' Motions to Dismiss shall be filed no later than August 9, 2017; and
- (3) The hearing on Defendants' Motions to Dismiss shall be continued to August 22, 2017 at 2:00 p.m., or the first available date thereafter.

The Parties FURTHER STIPULATE AND AGREE and respectfully request that the Court continue the currently scheduled CMC to August 22, 2017, to coincide with the hearing on Defendants' Motions to Dismiss.

IT IS SO STIPULATED.

DATED: June 23, 2017

STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON PA

By /s/ Jason P. Hernandez
Eugene E. Stearns
Jason P. Hernandez

TAYLOR & PATCHEN, LLP
Jonathan A. Patchen
Max Baba Twine

Attorneys for Plaintiffs John E. Abdo, as
Trustee of the John E. Abdo Trust Dated June
11, 2014, and John E. Abdo, as Trustee of the
John E. Abdo Trust Dated March 15, 1976

1 DATED: June 23, 2017

COBLENTZ PATCH DUFFY & BASS LLP

2
3 /s/ Rees F. Morgan
By _____

4 Rees F. Morgan
5 Andrew Schalkwyk

6 Attorneys for Plaintiffs Rising Tide I, LLC and
7 Rising Tide II, LLC

8 DATED: June 23, 2017

SEYFARTH SHAW LLP

9
10 /s/ Gregory A. Markel
By _____

11 Giovanna A. Ferrari
12 Gregory A. Markel
13 Heather E. Murray

14 Attorneys for Defendants Michael R.
15 Fitzsimmons, Peter Lai, Christopher G. Power,
16 Peter J. Goetner, Christian Borchert, Ernest D.
17 Del, Marc S. Yi, James C. Peters, and Souheil
18 S. Badran

17 DATED: June 23, 2017

ROPES & GRAY LLP

19 /s/ Rocky Tsai
20 By _____

21 Rocky Tsai

22 Attorney for Defendant David Cowan

23
24 *Filer's attestation:* Pursuant to Civil L.R. 5-1(i)(3) regarding signatures, Jason P. Hernandez
25 hereby attests that concurrence in the filing of this document has been obtained from each of the
26 other signatories.

[PROPOSED] ORDER

Having reviewed the Stipulation of the parties and their attorneys of record, and good cause appearing therefor:

IT IS HEREBY ORDERED that, pursuant to the parties' stipulation:

- (1) Plaintiffs in this matter (17-cv-00851 EDL) and Related Case No. 17-cv-1232 EDL shall file their Oppositions to the *Abdo* case Defendants' Motion to Dismiss (Dkt. Nos. 21, 22) and the Related Case Defendants' Motions to Dismiss (Related Case Dkt. Nos. 19, 20, 22, 23), respectively, no later than July 11, 2017;
- (2) Defendants' Replies in support of Defendants' Motions to Dismiss shall be filed no later than August ⁸9, 2017;
- (3) The hearing on Defendants' Motions to Dismiss shall be continued to August 22, 2017 at 2:00 p.m., or the first available date thereafter; and
- (4) The Initial Case Management Conference currently set for August 8, 2017 shall be continued to August 22, 2017, or the first available date thereafter to coincide with the hearing on the Motions to Dismiss.

IT IS SO ORDERED

DATED: June 26, 2017



HON. ELIZABETH D. LAPORTE
UNITED STATES MAGISTRATE JUDGE